

REMARKS

I. Amendment to the Drawings

The Examiner has objected to the drawings under 37 C.F.R. § 1.83(a), concluding that each of the features must be shown or the feature(s) canceled from the claim(s). Specifically, the Examiner has noted that the buckle in claim 1 and the securing strap passing through the loop in claims 2, 8 and 10 must be shown or the feature(s) canceled from the claim(s).

Applicants have amended claim 1 to replace the term “buckle” with the term “fastening mechanism”. The claimed “fastening mechanism” is shown in Fig. 1 (78). This amendment does not introduce new matter because this feature is described in paragraph 26 of the specification, i.e. “The securing stay (50) is held in place by a knot, buckle or similar device (78).”

Applicants have submitted a replacement drawing sheet, such that Figure 3D now shows the securing strap (50) passing through the loop (56, 58) as claimed in claims 2, 8 and 10. The changes to the drawings are not new matter because the features are described in paragraph 24 of the specification.

Accordingly, Applicants respectfully submit that the objections to the drawings have been obviated and should now be withdrawn.

II. Amendment to the Claims

Upon entry of the foregoing amendment, fourteen (14) claims are pending in the application. Of the pending claims, four (4) claims, Claims 1, 7, 8, and 9 are independent.

III. Claim Rejections under 35 U.S.C. § 112

The Examiner has rejected Claim Nos. 1-7 and 9-14 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner requested that Applicants clarify the matter as to whether one or two channels are being claimed.

Applicants are claiming only one channel. The channel claimed in the Independent Claim Nos. 1, 7 and 9 is one single channel that extends around the cover edge and is interrupted where there is a gap in the side wall members. Accordingly, Applicants have amended Independent Claim Nos. 1, 7 and 9 to more clearly express that one channel is being claimed. No new matter is introduced by this amendment as the structure is clearly shown to drawings and described in the specification, for example, in paragraph 22.

IV. Rejections under 35 U.S.C. § 103

a. Rejection of Claims Under 35 U.S.C. 103(a) as Unpatentable Over Porter (U.S. 5,904,243) in General

As set forth in greater detail below, the Examiner has rejected Claim Nos. 1-14 under 35 U.S.C. 103(a) as being unpatentable over Porter (U.S. 5,904,243) (“Porter ‘243”), and alternatively over Porter ‘243 in view of Swasey (U.S. 2,402,709) (“Swasey ‘709”), Horwath (U.S. 2003/0,226,846) (“Horwath ‘846”), Gallagher (U.S. 4,308,905) (“Gallagher ‘905”), Campbell (U.S. 2,705,461) (“Campbell ‘461”), and/or Frieder et al. (U.S. 3,011,820) (“Frieder ‘820”). However, the features the Examiner has concluded are obvious are not relied upon by Applicants to meet the obviousness requirements of 35 U.S.C. §103(a). The essential feature of

Applicants invention is the presence of only one point of contact between the securing strap and each of the two support straps.

The results realized from this claimed configuration (featured in all independent claims) were unexpected and have proven to be highly beneficial. As evidenced by the embodiments in Porter '243, prior art taught that a distribution of tensional force along the upper portion of the cap via multiple points of contact between the securing strap and each support strap was advantageous. However, Applicants have discovered that the concentration of tensional force that results from a single point of contact between the securing strap and each support strap produces a greater resistance to the cap being displaced by wind. As noted below, each of the independent claims have been amended to more clearly reflect the importance of this feature.

This crucial feature of a single point of contact between the securing strap and each support strap is neither taught nor suggested by Porter '243 or any of the other references the Examiner has cited. Rather, Porter '243 teaches away from the use of a single point of contact. Each embodiment in Porter '243 consists of at least two points of contact between each supporting strap and securing strap. Because Porter '243 teaches away from the use a single point of contact between each supporting strap and the securing strap, rejection under 35 U.S.C. §103(a) on the basis that the respective claims are unpatentable over Porter '243 cannot be maintained.

The unexpected benefits of Applicants' invention have resulted in significant commercial success of the commercial embodiment of Applicants' invention. In fact, the commercial embodiment of Applicants' invention has been significantly more successful in the marketplace than the commercial embodiment of the invention disclosed in Porter '243.

b. Specific Rejection of Claims Under 35 U.S.C. 103(a)

1. Rejection of Claim No. 8

The Examiner has rejected Claim No. 8 under 35 U.S.C. §103(a) as being unpatentable over Porter (U.S. 5,904,243), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Porter '243 in view of Swasey '709.

The Examiner notes that it “would have been obvious to one of ordinary skill in the art to eliminate the rings and thread the securing strap through first and second support straps.” However, Applicant has not relied on the presence or absence of rings to meet the requirements of 35 U.S.C. 103(a). As discussed in Section IV(a), *supra*, the crucial component of the invention is the presence of a single point of contact between the securing strap and each support strap, and this crucial component is neither taught nor suggested in Porter '243.

As explained above, Claim 8 has been amended to more clearly represent the importance of a single point of contact between the securing strap and each support strap by adding the limitation “where said support straps provide no more than one point of contact between the securing strap and each support strap”. This limitation squarely removes any rejection based upon Porter '243.

Furthermore, Swasey '709 neither teaches nor suggests the use or importance of a single point of contact between a securing strap and a support strap. Therefore, a rejection based on Porter '243 in view of Swasey '709 cannot be maintained, as the combination of references does not suggest the present combination to claimed structural features. Moreover, there is no

motivation to combine Porter and Swasey, as neither reference suggests the single point of contact between structure and support strap on each side of the cover.

2. Rejection of Claim Nos. 1, 2, 3, 5, 6, 9-11, 13 and 14

The Examiner has rejected Claims Nos. 1, 2, 3, 5, 6, 9-11, 13 and 14 under 35 U.S.C. §103(a) as being unpatentable over Porter '243, or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Porter '243 in view of Horwath '846 or Gallagher '905.

The Examiner notes that it would have been obvious to one of ordinary skill in the art to (i) provide the channel on the other end walls, (ii) eliminate the rings and have the securing strap pass through the loop, and (iii) make the cover from various sections including triangular sections. However, the Applicants have not relied on any of these three features to meet the requirements of 35 U.S.C. §103(a). As discussed in Section IV(a), *supra*, the crucial component of the invention is the presence of a single point of contact between the securing strap and the support strap on respective sides of the cover, and this crucial component is neither taught nor suggested in Porter '243, which requires two (2) securing straps and multiple contact points on each side of the Porter module. This construction is seen clearly in Porter, for example, see Figs. 1 and 2 of Porter, and is described fully in Column 7 of the reference, first full paragraph. Accordingly, Porter clearly teaches away from the presently claimed construction.

Independent Claim Nos. 1, 7 and 9 have been amended to more clearly represent the importance of the limitation of a single point of contact between the securing strap and each support strap by adding the limitation “wherein each of the first and second support straps provide no more than one point of contact between the securing strap and the support strap”.

This limitation squarely removes any rejection based upon Porter '243, which requires two securing straps and multiple contact points on each side between. See, *inter alia* structures 59, 67 and support straps 53, 55. (See, for example, Figs. 1 and 2 of Porter).

Furthermore, neither Horwath '846 nor Gallagher '905 teaches or suggests the use or importance of a single point of contact between a securing strap and a support strap. Therefore, neither a rejection based on Porter '243 in view of Horwath '846 nor a rejection based on Porter in view of Gallagher '905 can be maintained .

3. Rejection of Claim Nos. 2 and 10

The Examiner has rejected Claims Nos. 2 and 10 under 35 U.S.C. 103(a) as being unpatentable over Porter '243 in view of Swasey '709. In Section IV(b)(2), *supra*, Applicants have set forth that the rejection of these claims based on Porter '243 cannot be maintained because the crucial component of the invention is the presence of a single point of contact between the securing strap and each support strap, and this component is neither taught nor suggested in Porter '243. Furthermore, this limitation of a single point of contact between the securing strap and each support strap is neither taught nor suggested in Swasey '709. Therefore, a rejection based on Porter '243 in view of Swasey '709 cannot be maintained.

4. Rejection of Claim Nos. 4, 7 and 12

The Examiner has rejected Claim Nos. 4, 7 and 12 under 35 U.S.C. 103(a) as being unpatentable over Porter '243 in view of Campbell '461 or Frieder '820.

The Examiner notes that it would have been obvious to one of ordinary skill in the art to provide diamond shaped loop from the support straps to provide an alternative shape loop.

However, the Applicant has not relied on the presence or absence of a diamond shaped loop to meet the requirements of 35 U.S.C. §103(a). As discussed in Section IV(a), *supra*, the crucial component of the invention is the presence of a single point of contact between the securing strap and each support strap, and this crucial component is neither taught nor suggested in Porter '243, Campbell '461 or Frieder '820.

Independent Claim Nos. 1, 7 and 9 have been amended to more clearly represent the importance of the limitation of a single point of contact between the securing strap and each support strap by adding the limitation "where said support straps provide no more than one point of contact between the securing strap and each support strap". This limitation squarely removes any rejection based upon Porter '243 in view of Campbell '461 or Frieder '820. Therefore, neither a rejection based on Porter '243 in view of Campbell '461 nor a rejection based on Porter '243 in view of Frieder '820 can be maintained against the independent claim nor the dependent claim which feature patentable limitation on their respective allowable base claims.

V. Conclusion

Applicants respectfully submit that the independent claims are allowable over the prior art of record, including the cited references. For similar reasons, and for the additional reasons set forth above, Applicants urge that the dependent claims are also allowable.

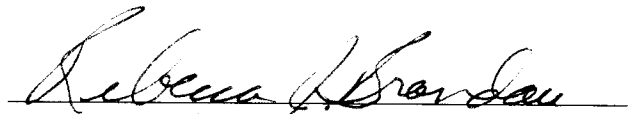
All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and

complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, reading "Rebecca J. Brandau", is written over a horizontal line.

By: Rebecca J. Brandau, Reg. No. 33,654
Husch & Eppenberger, LLC
190 Carondelet Plaza
St. Louis, MO 63105
314-480-1872
314-480-1505 FAX